

Victims' Commissioner's Briefing on Victims of Mentally Disordered Offenders

[The Victims and Prisoners Bill](#) seeks to strengthen the principles of the Victims' Code by placing them in legislation, including the principle that victims should have the opportunity to make their views heard in the criminal justice process. However, this principle does not apply equally to victims of mentally disordered offenders (MDOs) compared with victims of offenders in prison. The Bill presents a valuable opportunity to ensure that these two groups of victims are afforded the same rights and entitlements.

Issue

Under the [Victims' Code of Practice](#), victims have the right to make a Victim Personal Statement (VPS). The VPS is the single key entitlement where victims can explain how the crime committed against them affected them.

However, the Victims' Code does not extend the entitlement to submit a VPS to victims of MDOs whose cases are reviewed at a Mental Health Tribunal. This is despite a widespread consensus that the opportunity to submit a VPS is beneficial to victims. Families bereaved by homicide, for example, are not any less affected or traumatised if the homicide was committed by an MDO; nor is there any evidence to suggest that the cathartic benefits of submitting a VPS do not apply to victims of an MDO.

The current position results in a two-tier system for victims. A distinction is made between victims whose offenders are serving prison sentences and those who are patients detained in mental health hospitals. Whilst this distinction is based upon the status of the offender, it is victims who lose out to unequal treatment.

The case for change

The Victims' Commissioner published [a review into the rights of victims of mentally disordered offenders in 2018](#). This report made seven recommendations for achieving parity of treatment between victims going through the Parole process and those going through the Mental Health Tribunal. Only one has been implemented.

In April 2018, the Government announced further progressive steps in assisting victims to contribute to the parole process, including the right to request a summary of reasons for a Parole Board decision and the right to challenge without seeking judicial review. These were welcome developments; however, they do not apply to victims of MDOs. The disparity in treatment between victims of MDOs and victims of offenders in prison has therefore worsened.

In Scotland, Mental Health Tribunals allow representations from victims. The Mental Health (Care and Treatment) (Scotland) Act 2003 provides a statutory right for any party that has an interest to make representations to the tribunal either orally or in writing. The victim makes representations to the Tribunal panel considering the case. It takes place at a separate oral hearing, where the patient is not present (although it is attended by their legal representative).

The victim's representations are made to the Tribunal panel which is considering the case. This has not proved to be in any way problematic. Having heard the victim's representations, the Tribunal has been able to have regard to them in deciding for example whether to attach any particular condition to a patient's conditional discharge.

(Mental Health Tribunal for Scotland Response to Scottish Government Consultation on Draft Proposals for a Mental Health (Scotland) Bill, April 2014)

The Deputy Chamber President of the English Mental Health Tribunal [has stated in previous correspondence](#) with the Victims' Commissioner that there is no authority for the Tribunal to consider the impact of the crime on victims when applying the statutory test for release. This is also true of the statutory release tests applied by the Mental Health Tribunal for Scotland and the Parole Board for England and Wales. However, these bodies are willing to meet victims and allow them to explain the impact that the crime has had on them, whilst still upholding the principle that victim representations do not have a direct bearing on the decision to release.

There is no apparent reason why policy and practice in England and Wales should differ from that in Scotland. Cultural resistance from the Tribunal must be overcome through legislative means.

Changes needed to the Bill

Entitlements under the Victims' Code are intended to provide support for victims throughout their criminal justice journey and in turn, help them to cope and recover.

The trauma and distress experienced by victims of serious sexual and violent crime, including homicide, are the same irrespective of the status of their offender. As such, it would seem only right that victims of all such crimes should receive the same level of support and the same entitlements.

The Victims and Prisoners Bill should be amended to provide victims of mentally disordered offenders the right to submit a VPS, and these victims should be given the right to make representations to the Tribunal in person.

Opportunities within the Bill

The following amendments to the Bill would make the necessary changes required that would grant parity of rights to victims of mentally disordered offenders.

- Victims of mentally disordered offenders who appear before the Mental Health Tribunal should be able to make a Victim Personal Statement and should be able to meet the Tribunal to present the VPS in person. This would grant victims of mentally disordered offenders the same rights at this stage of their criminal justice journey as is granted to victims of offenders in prison.
- The principle that victims should be given information about the criminal justice process should be extended to explicitly include the NHS, in order to bring mental health tribunal decisions in line with the rest of the criminal justice system.
- The NHS should be included within the remit of the Victims' Code, to ensure that victims of mentally disordered offenders are provided with information about their offender – including a summary of reasons for the decision taken by the Mental Health Tribunal.

If you have any question on this or any other aspect of the Victims' Commissioners work please contact Dr Madeleine Storry, Head of Policy and Research at madeleine.storry@victimscommissioner.org.uk